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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re	)	Case No. 24-11015-B-11
	)	
<b>PINNACLE FOODS OF CALIFORNIA LLC,</b>	)	
	)	Docket Control No. MB-4, VP-2
Debtor.	)	
_____	)	
In re	)	Case No. 24-11016-B-11
	)	
<b>TYCO GROUP, LLC,</b>	)	Docket Control No. MB-4, VP-2
	)	
Debtor.	)	
_____	)	
In re	)	Case No. 24-11017-B-11
	)	
<b>CALIFORNIA QSR MANAGEMENT, INC.,</b>	)	Docket Control No. MB-4, VP-2
	)	
Debtor.	)	Date: March 25, 2025
_____	)	Time: 9:30 a.m.
	)	Place: 2500 Tulare St.
	)	Dept. B, Fifth Floor
	)	Courtroom 13

**MEMORANDUM RULING ON FLAGSTAR FINANCIAL & LEASING, LLC’S AND  
POPEYES LOUISIANA KITCHEN, INC.’S MOTIONS TO REMOVE DEBTORS FROM  
POSSESSION AND EXPAND POWERS OF SUB V TRUSTEE**

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Kevin J. Etzel, Vedder Price, P.C. for Flagstar Financial &  
Leasing LLC, Movants.

Michael J. Berger, Law Offices of Michael J. Berger, for Pinnacle  
Foods of California, LLC, Tyco Group, LLC, CA QSR Management,  
Inc., Debtors/Respondents.

Walter R. Dahl, Subchapter V Trustee.

RENÉ LASTRETO II, Bankruptcy Judge:

## INTRODUCTION

While wandering Wonderland, Alice reached a fork in the road. She encountered the Cheshire Cat in a tree who gave her two suggestions: Go one way and reach the March Hare; go the other way and reach the Hatter. The only problem, the Cheshire Cat said they both were mad. Alice was left with two unappealing choices.<sup>1</sup>

These three chapter 11 subchapter V cases have reached a fork in the road. Unlike Alice, the court has three tines in this fork: Expand the subchapter V trustee's powers, dismiss the cases, or convert them to chapter 7. After considering the development of these cases, determining cause exists to follow one of the forks, and considering the interest of the creditors and the estates, the court chooses the fork that results in conversion of these cases to chapter 7.

## BACKGROUND

### I.

Pinnacle Foods of California, LLC ("Pinnacle"), Tyco Group, LLC ("Tyco") and California QSR Management, Inc. ("QSR") each filed Chapter 11 bankruptcy proceedings in April 2024 and elected to proceed under Sub Chapter V. Pinnacle and Tyco are franchisees of Popeye's Louisiana Kitchens ("PLK"). QSR is the operating entity for both.

Flagstar Financial & Leasing, LLC ("Flagstar") is the primary secured creditor. Flagstar is owed approximately 3.1 million dollars secured by all three Debtors' personal property

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<sup>1</sup> She chose to seek out the March Hare partly because, Alice reasoned, he was less likely to be as mad. Any choice was dubious since the Cheshire Cat said it was mad too. Carroll, Lewis. Alice's Adventures in Wonderland, Chapter 6.

1 assets including inventory, equipment, leases, accounts, goods,  
2 and general intangibles. There is no dispute as to the extent or  
3 validity of Flagstar's interest.

4 PLK is owed approximately \$1.3 million from Pinnacle and  
5 \$221,000.00 from Tyco for unpaid franchise and advertising fees.

6 From the beginning of these cases, PLK has maintained that  
7 it would not consent to either Pinnacle or Tyco assuming their  
8 franchise agreements under 11 U.S.C. § 365(c).<sup>2</sup> Pinnacle  
9 operates six PLK fast food restaurants - five in Fresno,  
10 California and one in Turlock, California. Tyco operates one PLK  
11 restaurant in San Diego, California. Pinnacle, Tyco and PLK  
12 entered into separate franchise agreements for each restaurant.

13 These cases have been fraught with polarized legal positions  
14 from the onset. The Subchapter V Trustee, Walter Dahl, has  
15 endeavored to close the gap between the factions without success.

16 Four months after the cases were filed, PLK filed its first  
17 motion to remove the Debtors-in-possession and expand the powers  
18 of the Subchapter V Trustee. Flagstar joined in the motion.  
19 Debtors opposed. The court denied the motions because the cases  
20 were relatively new and no party had formally brought the issue  
21 of the ability of Pinnacle and Tyco to assume the franchise  
22 agreements before the court. PLK (and by joinder Flagstar),  
23 initially argued that controlling Ninth Circuit law clearly  
24 precluded Pinnacle and Tyco's assumption of the franchise  
25 agreements under *Perlman v. Catapult Entertainment, Inc. (In Re*  
26 *Entertainment, Inc.)* 165 F.3d 747 (9th Cir. 1999). Because of  
27 Ninth Circuit Law, PLK and Flagstar argued that it was gross  
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<sup>2</sup> All references to "Section" shall be to the Bankruptcy Code (11 U.S.C. § 101 et seq.) unless otherwise indicated.

1 mismanagement on the part of the Debtors to prosecute these cases  
2 since without PLK's consent, the Debtors could not reorganize.  
3 The court nevertheless denied the motion finding that, among  
4 other things, the Debtors asserting a contrary legal position did  
5 not evidence gross mismanagement.

6 Then, in September 2024 Pinnacle filed a motion to assume  
7 the franchise agreements under § 365. In October 2024, following  
8 briefing and oral argument, the court denied Pinnacle's motion  
9 based in part on *Catapult*, the Lanham Trademark Act (Title 15 Ch.  
10 22 U.S. Code) and relevant provisions the California Franchise  
11 Relations Act (Cal. Bus. & Prof. Code § 20000 et seq.).

12 Fourteen days later, Pinnacle filed a motion to reconsider  
13 which the court denied in December 2024. Pinnacle appealed both  
14 orders. The appeal is pending.

15 After receiving an extension of time to file a plan, the  
16 Debtors filed three plans which would require assumption of the  
17 franchise agreements in order to implement the reorganization.  
18 These plans went nowhere. Then in early 2025, the Debtors filed  
19 other plans that required assumption of the franchise agreements  
20 PLK again said it would not consent.

21 As these efforts proceeded, the Debtors sought and obtained  
22 an extension of time when the leases for their franchise  
23 locations had to be assumed. Pinnacle also obtained lessor  
24 consents for short extensions beyond the 210 days permitted under  
25 § 365(d)(4). Those extensions expired February 14, 2025. There  
26 have been no further extensions ordered by the court. Pinnacle  
27 claims that two landlords have agreed to subsequent extensions.  
28 But a majority of the landlords have not agreed.

1 Pinnacle did file a motion to assume the leases. However,  
2 the motion was opposed by the Subchapter V Trustee who argued,  
3 correctly, that given the administrative burden that a default  
4 would be on Pinnacle's estate, and the uncertainty of the  
5 reorganization, it was not an appropriate exercise of business  
6 judgment to assume the leases. The court agreed and denied the  
7 motions.

8 Based on the Debtors' monthly operating reports for the last  
9 five months there is a total loss of over \$48,000.00.<sup>3</sup>  
10 Pinnacle's most recent Monthly Operating Report shows only  
11 \$22,000.00 of cash on hand and a negative cash flow of  
12 \$58,000.00. (Doc. #502).

13 California QSR's most recent monthly operating report shows  
14 a negative net profit of \$45,327.00. (QSR Doc. #321). Tyco is  
15 inactive since the store was closed.

16 At the end of January 2025, PLK and Flagstar filed these  
17 motions. A week later, on February 4, 2025, the court held a  
18 hearing on other matters in all three cases. At that hearing,  
19 the court noted that modified plans had been filed by the Debtors  
20 but those plans still depended upon the assumption of the  
21 franchise agreements to implement them. The court also  
22 acknowledged the filing of these motions by PLK and Flagstar.  
23 The court continued the hearings on the motions to March 25,  
24 2025, to give all parties the opportunity to oppose the motions.  
25 But for reasons indicated on the record, the court also noted  
26 that the court was going to treat the hearing on March 25 as also  
27 encompassing the options of either dismissal or conversion of all

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28 <sup>3</sup> That number includes a projected loss for January 2025 of \$3,889.00. (Doc. #401). According to the January 2025 monthly operating report, net cash flow for Pinnacle during the month was negative \$9,123.44. (Doc. #452)

1 three cases. The court was clear that any new plan to be filed  
2 by March 5, 2025, must put these cases on a different trajectory.  
3 (Pinnacle Doc. #481).

4 The Debtors did file second modified plans on March 5, 2025.  
5 But the Pinnacle plan depends again upon assumption of the  
6 franchise agreements for its implementation. The plan does  
7 provide that if the appellate process results in Pinnacle being  
8 unable to assume the franchise agreements, the franchises will be  
9 liquidated. Notwithstanding the court's admonishments, no  
10 significant change in trajectory occurred.

## 11 **II.**

12  
13 In its motion, PLK contends there is cause to remove the  
14 debtors-in-possession because the Debtors are conflicted. PLK  
15 contends that Pinnacle's efforts to continue to litigate its  
16 ability to assume the franchise agreements is now contrary to the  
17 best interests of the creditors and the estate. Pinnacle not only  
18 filed a motion to assume the franchise agreements which was  
19 denied but filed and prosecuted a motion for the court to  
20 reconsider its order which, PLK argues, demonstrates the debtor  
21 prioritizing its own self-interest as opposed to what is best for  
22 the creditors or the estates. Since the Ninth Circuit has  
23 settled the issue for now, prosecution of the appeal and further  
24 litigation is not in the estate's best interest. PLK also argues  
25 that the financial position of Pinnacle and QSR is precarious.  
26 As further evidence of mismanagement, PLK stresses that the  
27 failure of the Debtors to preserve the rights to assume the  
28 commercial leases.

1 Flagstar essentially argues the same. Flagstar contends  
2 that it is gross mismanagement of the estate by the Debtor  
3 relentlessly pursuing a reorganization involving assumption of  
4 the franchise agreements and relying upon the landlord's consent  
5 to allow the Debtors to continue to occupy the restaurant space.

6 Both PLK and Flagstar urge the court to remove the debtors-  
7 in-possession and expand the Subchapter V Trustee's powers to  
8 those included in § 1183(b)(2) and (5). In addition, Flagstar  
9 and PLK want the Subchapter V Trustee's duties to be expanded to  
10 include authority to sell the franchises as a going concern.  
11 Flagstar contends that converting the cases will result in a  
12 lower collateral value leaving Flagstar exposed to a large  
13 unsecured claim.<sup>4</sup>

14 In contrast, the Debtors argue that neither Flagstar nor PLK  
15 have provided adequate evidence to establish the necessity for  
16 the debtors-in-possession to be removed for fraud, incompetence,  
17 or gross mismanagement of the affairs of the Debtors. The  
18 Debtors note that Pinnacle has pursued an appeal of the denial of  
19 the motion to assume the franchise agreements and the denial of  
20 the motion for reconsideration. The Debtors have also filed a  
21 Second Amended Chapter 11 Small Business Plan. The Debtors have  
22 stipulated to extend two leases for two Fresno locations on  
23 McKinley and Cedar Avenues. As to the other leases, Pinnacle has  
24 filed a motion to assume. The Debtors claim that all Flagstar  
25 and PLK really want is to sell the business when the Debtors want  
26 to preserve the business' value.

27 ///

28 \_\_\_\_\_  
<sup>4</sup> Flagstar has been receiving monthly payments under the court approved cash collateral budget.

1 As an alternative position, the Debtors argue that if the  
2 court rules that the Subchapter V Trustee's duties should be  
3 expanded, those duties should not include control of the pending  
4 appeal and a litigation involving Pinnacle and PLK pending in  
5 Florida. The Debtors contend that both litigations could result  
6 in a larger payout for unsecured creditors.

7 Flagstar's reply emphasizes that the Debtors continued  
8 accumulation of administrative expenses as a result of the  
9 litigation strategy amounts to gross mismanagement. Flagstar  
10 also notes that the recent closure by Pinnacle of the McKinley  
11 Avenue location is evidence that the Debtor is struggling.

12 In addition, Flagstar urges that the Second Modified Plan  
13 filed by the Debtors on March 7, 2025, is a "placeholder plan"  
14 which was contrary to what the court required as stated on the  
15 record at the February 4, 2025, hearing. The Second Modified  
16 Plan still requires the assumption of the franchise agreements.  
17 Only if the Debtors cannot assume the franchise agreements would  
18 they agree to liquidate. Accordingly, Flagstar contends, the  
19 Debtors have placed their own self-serving interests or those of  
20 their principal, Mr. Damani, ahead of the interests of the  
21 creditors and the estate.

22 PLK also replied asserting that the Debtors should be  
23 removed as debtors-in-possession or alternatively the cases  
24 should be converted to Chapter 7. PLK points to several recent  
25 developments supporting removal of the debtors-in-possession.  
26 They include the closure of two restaurants.<sup>5</sup>

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28 <sup>5</sup> The McKinley Avenue location in Fresno, a Pinnacle franchise is closed and the San Diego restaurant is closed which is the only location for the Tyco franchise.



At oral argument on these motions on March 25, 2025, PLK and Mr. Dahl, the Subchapter V Trustee, urged the court to convert the cases to chapter 7. Flagstar did not oppose conversion.

This is a civil proceeding arising under Title 11 of the United States Code. The District Court has jurisdiction under 28 U.S.C. § 1334(b). The District Court referred this matter to

1 this court under 28 U.S.C. § 157(a). This is a proceeding that  
2 the Bankruptcy Court may hear and finally determine under 28  
3 U.S.C. § 157(b) (2) (A).

## 4 5 DISCUSSION

### 6 I.

7 In a subchapter V chapter 11 case, the court *shall* order  
8 that the debtor not be a debtor-in-possession for "cause":

9 Including fraud, dishonesty, incompetence, or  
10 gross mismanagement of the affairs of the  
11 debtor, either before or after the date of  
12 commencement of the case, or for failure to  
perform the obligations of the debtor under a  
plan confirmed under [subchapter V]. § 1185(a)

13 Notably, once "cause" is found, the court "shall" remove the  
14 debtor-in-possession. Also, the word "including" in § 1185(a) is  
15 not limiting. § 102(3). Whether to remove a debtor-in-  
16 possession, dismiss, or convert a case is determined by the best  
17 interest of creditors and the estate. *In Re Pittner*, 638 B.R.  
18 255, 260 (Bankr. D. Mass. 2022) (Removal of debtor from possession  
19 under § 1185(a) resulting in increasing powers of the trustee  
20 under § 1183(b) (5)).

21 Section 1112 is part of subchapter V of chapter 11 of the  
22 Bankruptcy Code. § 1181(a). The process for converting or  
23 dismissing a case under chapter 11 involves a few steps.

24 First, conversion of a case to chapter 7 or dismissal  
25 "shall" be ordered "whichever is in the best interest of  
26 creditors and the estate for cause." § 1112(b) (1). Subdivision  
27 (b) (4) lists sixteen alternatives that would be "cause" to  
28 convert or dismiss. However, as with "cause" to remove a debtor-

1 in-possession under subchapter V, the alternatives are not  
2 limiting. The court is free to consider other factors. *In Re JJ*  
3 *Arch LLC*, 663 B.R. 258, 275 (Bankr. S.D.N.Y. 2024). Once cause  
4 for relief is shown, the Bankruptcy Court has broad discretion to  
5 either convert or dismiss the chapter 11 case. *In Re Ghatanfard*,  
6 666 B.R. 14, 23 (S.D.N.Y. 2024).

7 Second, once the movant establishes that “cause” exists, the  
8 burden shifts to the respondent to demonstrate by evidence the  
9 unusual circumstances that establish that dismissal or conversion  
10 is not in the best interests of creditors and the estate.

11 § 1112(b) (2); *In Re JJ Arch LLC*, 663 B.R. at 275.

12 Third, the debtor or any other party in interest must  
13 establish that there is a reasonable likelihood that a plan will  
14 be confirmed within a reasonable period of time; and the grounds  
15 for converting or dismissing the case include an act or omission  
16 of the debtor (other than substantial or continuing loss to or  
17 diminution of the estate and the absence of a reasonable  
18 likelihood of rehabilitation) and there exists a reasonable  
19 justification for the act or omission, and that the act or  
20 omission will be cured within a reasonable period of time fixed  
21 by the court. § 1112(b) (2) (A) and (B).

22 The Bankruptcy Court has broad discretion to determine  
23 whether unusual circumstances exist and whether conversion or  
24 dismissal is in the best interest of creditors and the estate.  
25 *In Re Ghatanfard*, 666 B.R. at 25 quoting *Andover Covered Bridge*,  
26 *LLC*, 553 B.R. 162, 172 (B.A.P. 1st Circuit 2016). “The code does  
27 not define unusual circumstances; however, courts have determined  
28 that it contemplates conditions that are not common in most

1 chapter 11 cases.” *In Re Van Eck*, 425 B.R. 54, 63 (Bankr. D.  
2 Conn. 2010). “Such conditions must not only be unusual, they  
3 must also demonstrate that dismissal or conversion is not in the  
4 best interest of creditors and the estate.” *Id.*

5 Applying both the specific provisions in subchapter V for  
6 the removal of the debtor-in-possession, § 1185(a), and the  
7 provisions for conversion and dismissal of a chapter 11 case  
8 generally, § 1112, there is cause for either form of relief.

9  
10 **II.**

11 There is cause to either remove the debtors-in-possession,  
12 convert these cases to chapter 7 or dismiss the cases.

13 First, since September 2024 there has been inconsistent and  
14 primarily negative cash flows based upon the monthly operating  
15 reports for these entities. There is some suggestion that these  
16 entities have operated at a profit. However, it does not appear  
17 that there is administrative solvency that would warrant  
18 continuation of the status quo. Given the cash positions of the  
19 two remaining operating entities, there is insufficient cash to  
20 continue.

21 Second, the Debtors, primarily Pinnacle, have continued to  
22 litigate the issue of assumption of the franchise agreements with  
23 the objective of reversal of settled Ninth Circuit law. The  
24 court has denied Pinnacle’s motion to assume the franchises and  
25 denied the motion to reconsider. The Debtors continue to pursue  
26 the litigation by filing both an appeal and a motion for stay  
27 pending appeal.

28 ///

1           Though it may be true that the Debtors or their principal  
2 want to pursue the rights they have available, that cannot be  
3 done without consideration of the creditors' and the estates'  
4 interests. That suggests a conflict of interest which is a cause  
5 for removal. *In Duling Sons, Inc.*, 650 B.R. 578, 581 (Bankr.  
6 S.D. 2023). ("Notwithstanding the presence of experienced  
7 professionals and extensive legal work in the case, the debtor-  
8 in-possession has made scant progress in securing support of  
9 creditors for a plan of reorganization").

10           Third, Pinnacle has allowed a majority of commercial leases  
11 for the franchise locations to be deemed rejected under  
12 § 365(d)(4) leaving future operations tenuous. Pinnacle has  
13 reported to the court that two landlords have agreed to continued  
14 extensions. But the majority have not.<sup>6</sup>

15           Fourth, the Debtors have continued to propose plans and  
16 modified plans that cannot be confirmed and are contrary to what  
17 the court has directed. The plans cannot be confirmed for  
18 several reasons not the least of which is that the court has  
19 determined that the franchise agreements cannot be assumed  
20 without PLK's consent. That is consistent with Ninth Circuit  
21 authority. Even the Second Modified Plan filed on March 7, 2025,  
22 contains a liquidation option but only after it is determined the  
23 franchise agreements cannot be assumed. That is unrealistic.

24           Fifth, the cases are teetering on administrative insolvency.  
25 Maintenance of the status quo results in accrual of attorneys'  
26 fees and professional fees with no feasible means of paying those  
27 fees at plan confirmation without a major capital infusion which  
28

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<sup>6</sup> One of the landlords who has agreed is the landlord for the McKinley Avenue location in Fresno which has been closed.

1 has not been proposed to date. That is also a basis for cause to  
2 convert or dismiss. *Hassen Imports Partnership v. City of West*  
3 *Covina (In Re Hassen Imports Partnership)*, CC-13-1019 KiPaD, 2013  
4 Bankr. LEXIS 3870\*38 (B.A.P. 9th Cir. August 19, 2013).

5 Any of these factors would be sufficient "cause" to either  
6 remove the debtors-in-possession, convert the cases to chapter 7  
7 or dismiss the cases.

8  
9 **III.**

10 **A.**

11 The Debtors have provided and established no unusual  
12 circumstance that converting or dismissing the case is not in the  
13 best interest of creditors and the estate.

14 Debtors claim that there is no evidence of fraud,  
15 incompetence, dishonesty, or gross mismanagement. But as  
16 discussed above, those "causes" are not limiting. Conflicts  
17 between the interests of the debtors-in-possession and the  
18 creditors in the estate are also causes. See, *Ghatanfard*,  
19 *Pittner*, and *In Re Sillerman*, 605 B.R. 631, 642 (Bankr. S.D.N.Y.  
20 2019). (Listing conflicts of interest as an example of non-  
21 enumerated misconduct found to constitute cause).

22 The Debtors also argue that it is pursuing an appeal on the  
23 assumption litigation and pursuing the Florida litigation could  
24 result in additional returns to unsecured creditors. However,  
25 "mere hope of prevailing on potential litigation claims is not a  
26 sufficient basis to defeat a showing of cause to convert." *In Re*  
27 *BH S&B Holdings, LLC*, 439 B.R. 342, 350 (Bankr. S.D.N.Y. 2010).

28 ///

1 In an effort to make pursuit of litigation in this case an  
2 "unusual circumstance," the Debtors assert that its' principal,  
3 Mr. Damani, is going to pay for all appellate costs in pursuing  
4 the appeal on the assumption issue and paying for the Florida  
5 litigation. However, that does not solve the conflict issue.  
6 Litigation will still involve significant delay. Even the  
7 proposed Second Modified Plan has a small distribution to  
8 unsecured creditors (3%). So, the Debtors principal proposes  
9 that all other interests simply be placed on "pause" while  
10 litigation proceeds. That is an unsatisfactory result.

11 Maintenance of the uncertain status of the reorganization is  
12 simply contrary to one of the primary purposes of subchapter V.  
13 "Subchapter V of chapter 11 was created with the passage of the  
14 Small Business Reorganization Act to create an expedited process  
15 for small business debtors to efficiently reorganize." *Lafferty*  
16 *v. Off-Spec. Sols., LLC (In Re Off-Spec. Sols., LLC)*, 651 B.R.  
17 862, 868 (B.A.P. 9th Cir. 2023).

18 The Debtors claim the circumstances are unusual because all  
19 the movants want is to sell the business. But based upon what  
20 has occurred so far in the cases, all the debtors-in-possession  
21 want is to continue to litigate the issue of franchise  
22 assumption. An impasse is not a building block to  
23 reorganization.

24  
25 **B.**

26 The Debtors have not established a reasonable likelihood of  
27 a plan being confirmed in a reasonable time and that the grounds  
28 for conversion, dismissal, or removal of the debtors-in-

1 possession and expand the powers of the Subchapter V Trustee can  
2 be reasonably justified and cured within a reasonable time.

3 The Debtors have not provided any evidence that a plan can  
4 be confirmed within a reasonable time. The current plan before  
5 the court cannot be confirmed for the reasons indicated above.  
6 It is further not consensual that means a cramdown would be  
7 necessary. Even if the plan was confirmable - it is not - given  
8 the Debtors experience in chapter 11, it is not at all clear the  
9 Debtors would be able to make the payments under the plan.

10 Further, the plan does not provide remedies if payments are not  
11 made. Liquidation is only triggered under the Second Modified  
12 Plan if the Debtors are unable to assume the franchise  
13 agreements. So, there is no current pathway to an appropriate  
14 reorganization.

15 This is also troubling as PLK has presented a declaration of  
16 a potential purchaser for four of the franchises. Apparently an  
17 offer was made for the purchase but no response was made to the  
18 offer other than a later comment by the Debtors' principal, Mr.  
19 Damani, that the offer was "too low." All of this establishes a  
20 lack of an ability to reorganize within a reasonable period of  
21 time.

22  
23 **C.**

24 The Debtors have not justified the problems facing these  
25 cases or proposed a prompt cure.

26 The Debtors have said that they have an agreement on two  
27 leases, one of which is for a closed restaurant. The majority of  
28 the lessors are not in agreement. The Debtors did file a motion



1 to assume leases that the court did not grant because of the  
2 substantial administrative expense that may be incurred if the  
3 Debtors default.

4 No change in litigation strategy has been evidenced by the  
5 Debtors. In fact, they have "doubled down" by hiring a separate  
6 appellate firm to pursue the appeal of the assumption issue.

7 No capital infusion is contemplated by the Debtors to shore  
8 up the unreliable cash flow and administrative solvency issues.

9 So, there is cause to convert the cases to chapter 7,  
10 dismiss the cases, or remove the debtors-in-possession and expand  
11 the powers of the Subchapter V Trustee. There is no sustainable  
12 defense to these motions.

13  
14 **IV.**

15 The issue then becomes whether the court should remove the  
16 debtors-in-possession and expand the powers of the Subchapter V  
17 Trustee, convert the cases to chapter 7, or dismiss the cases.

18  
19 **A.**

20 Dismissal at this time does not seem viable.

21 PLK could pursue any remedies it has under the franchise  
22 agreements which may result in the closure of the restaurants.  
23 However, the creditors will receive nothing as a result of the  
24 transfer or sale of the restaurants. Flagstar will maintain its  
25 lien. However, the value of its collateral will rapidly  
26 deteriorate. There are many creditors in these cases including  
27 PLK, Flagstar and a subordinate lienholder. Those creditors  
28 pursuing their remedies will not only negatively affect the

1 administrative claimants who have allowed claims in this case but  
2 creditors with unsecured claims as well.

4 **B.**

5 Expanding the powers of the subchapter V trustee has no real  
6 advantage in resolving the cases.

7 One difficulty is that a subchapter V trustee cannot file a  
8 Plan. Only the debtor can file a plan under subchapter V.  
9 § 1189(a). Though it is possible that a subchapter V trustee  
10 could file a joint plan with the debtor to achieve a mutual  
11 objective, based on the court's observations in these cases so  
12 far, that seems highly unlikely.

13 One advantage to expanding the powers of the subchapter V  
14 trustee would be the continuation of the business for a short  
15 period of time to permit an orderly liquidation. At the hearing  
16 on these motions, Flagstar's counsel indicated Flagstar may  
17 consent to cash collateral use to facilitate a sale. On the  
18 other hand, without a liquidation Plan, the cases will likely end  
19 up being converted anyway. That means there will be additional  
20 administrative expenses incurred as the liquidation process  
21 proceeds.

22 A subchapter V trustee with expanded powers would also face  
23 the reality that a majority of these Debtors' landlords have not  
24 consented to extensions of the leases. Under § 365(d)(4), absent  
25 affirmative agreements from all of the landlords, the subchapter  
26 V trustee would need to surrender possession of the franchise  
27 premises at the landlords insistence.

28 ///

1 Even if the court expanded the subchapter V trustee's  
2 authority to include control of the pending appeal and the  
3 Florida litigation, the court envisions problems lurking. The  
4 Debtors' fall back position on this motion is to limit the  
5 expanded powers to exclude control of these litigations. Any  
6 question as to standing of the subchapter V trustee may result in  
7 this court having to be involved in additional litigation  
8 concerning how the appeal and Florida litigation will proceed.  
9 That is an inefficient use of judicial resources.

10 There is also at least a question as to the limits of any  
11 expanded power. Notably absent in subchapter V is any reference  
12 to a subchapter V trustee having the power to liquidate assets  
13 parallel to a duty of a chapter 7 trustee. See §704(a)(1). On  
14 the other hand, the power of a debtor-in-possession under  
15 subchapter V is not exclusive. § 1184; See *In Re Roe*, 23-32077-  
16 thp11, 2024 WL 206678 (Bankr. D. Or. January 18, 2024). The  
17 expansion of a subchapter V trustee's powers may be somewhat  
18 murky.

19 Finally, payment of the subchapter V trustee's fees may be  
20 questionable if the trustee's powers are expanded in these cases.  
21 The trustee will have duties under § 1183(a)(2) to investigate  
22 the debtor and report. The trustee will have to file operating  
23 reports and may have to file tax returns and provide tax  
24 information. See §§ 704(a)(8); 1183(a)(5). It is not clear that  
25 all of those duties would be compensated by way of a surcharge on  
26 secured creditors' collateral under § 506(c). But even if all  
27 services of the subchapter V trustee with expanded powers could  
28 ///

1 be compensated by surcharge or otherwise, there is very little  
2 advantage over conversion of the cases to chapter 7.

3  
4 **C.**

5 Though disruptive, the best interests of creditors and the  
6 estates will be served by conversion of all cases to chapter 7.

7 Conversion will give full authority to the chapter 7 trustee  
8 without the necessity for further court orders or interpretation  
9 of those orders.

10 The court is mindful of the concerns of both PLK and  
11 Flagstar concerning valuation of the franchises if they are  
12 closed and liquidated. Though unusual, under § 721, a chapter 7  
13 trustee can operate one or more franchise locations for a limited  
14 period. Obviously, the chapter 7 trustee will need to make that  
15 assessment and be comfortable with use of cash collateral to  
16 operate the business. As mentioned above, a chapter 7 trustee  
17 will have surcharge authority under § 506(c) for some or all of  
18 the expenses incurred by the chapter 7 trustee.

19 A chapter 7 trustee will be able to objectively assess  
20 whether the appeal of this court's rulings on the assumption  
21 issue and the Florida litigation should be pursued.

22 Also, any fees allowed for the chapter 11 professionals  
23 which have been unpaid will maintain their priority status  
24 (subject to chapter 7 fees and costs). A chapter 7 trustee can  
25 pursue any claw back from any "overpaid" administrative claimant  
26 if that claimant has been paid more than a pro rata portion of  
27 any distribution to that priority.

28 ///

1 If there are any intercompany transactions among the  
2 Debtors, a chapter 7 trustee can investigate and pursue recovery  
3 of those as well. The cases have been pending for one year. A  
4 chapter 7 trustee will have some time to evaluate and investigate  
5 those issues.

6 Finally, it may be that unsecured creditors receive a  
7 distribution from a chapter 7 trustee in one or more of these  
8 cases. Mention was made at the oral argument on these motions  
9 that a relative of the Debtors' principal may be willing to buy  
10 the franchises for over three million dollars. Whether that sale  
11 would be a possibility remains to be seen. However, that  
12 suggests the possibility that the franchises may bring some value  
13 to these estates and the creditors.


14 On balance, then, conversion seems the best alternative  
15 under the facts of these cases and conversion will be ordered.

16  
17 **CONCLUSION**

18 For the foregoing reasons, the court will enter separate  
19 orders converting Pinnacle Foods of California, LLC; Tyco Group,  
20 LLC; and California QSR Management, Inc. to chapter 7 of the  
21 Bankruptcy Code.

22  
23 **Dated: Mar 27, 2025**

**By the Court**

24  
25   
26 **René Lastreto II, Judge**  
**United States Bankruptcy Court**

**Instructions to Clerk of Court  
Service List - Not Part of Order/Judgment**

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked \_\_\_\_, via the U.S. mail.

Pinnacle Foods of California LLC  
Tyco Group, LLC  
California QSR Management, Inc.  
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Granite Bay, CA 95746-2820

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